

2006

Celeste Moss, Bradley A. Rone v. Pete Suazo Utah Athletic Commission, Utah Department of Commerce, State of Utah, Top Rank, INc., Sean Gibbons, Pete Susens, Cornelius Boza-Edwards, FKF Productions, Eddie "Flash" Newman, Randall Delcore, M.D. : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robert B. Sykes; Ryan B. Evershed; Robert Sykes and Associates; attorneys for appellant.

Debra J. Moore; Barry Lawrence; Assistant Attorney General; attorneys for appellee.

Recommended Citation

Brief of Appellant, *Moss v. Pete Suazo Athletic Commission*, No. 20060438 (Utah Court of Appeals, 2006).
https://digitalcommons.law.byu.edu/byu_ca2/6500

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

CELESTE MOSS, an Heir of)	
BRADLEY A. RONE,)	
)	APPEAL
Plaintiff/Appellant,)	
)	
v.)	
)	
PETE SUAZO UTAH ATHLETIC)	Supreme Court
COMMISSION, UTAH)	No. 20060438
DEPARTMENT OF COMMERCE,)	
STATE OF UTAH, TOP RANK, INC.,)	
a Nevada Corporation, SEAN)	
GIBBONS, PETE SUSENS,)	
CORNELIUS BOZA-EDWARDS, FKF)	Third Dist. Ct.
PRODUCTIONS, EDDIE “FLASH”)	Civil No. 050911890
NEWMAN, RANDALL DELCORE,)	
M.D., and JOHN AND JANE DOES 1-)	
10,)	Judge Sandra Peuler
)	
Defendants/Appellee.)	
)	
)	
)	
)	
)	

FILED
UTAH APPELLATE COURTS
AUG 07 2006

LIST OF ALL PARTIES

All of the Parties are listed on the cover of this brief.

CELESTE MOSS, an Heir of
BRADLEY A. RONE,

Plaintiff/Appellant,

v.

PETE SUAZO UTAH ATHLETIC
COMMISSION, UTAH
DEPARTMENT OF COMMERCE,
STATE OF UTAH, TOP RANK, INC.,
a Nevada Corporation, SEAN
GIBBONS, PETE SUSENS,
CORNELIUS BOZA-EDWARDS, FKF
PRODUCTIONS, EDDIE “FLASH”
NEWMAN, RANDALL DELCORE,
M.D., and JOHN AND JANE DOES 1-
10,

Defendants/Appellee.

APPEAL

Supreme Court
No. 20060438

Third Dist. Ct.
Civil No. 050911890

Judge Sandra Peuler

ROBERT B. SYKES (#3180)
 RYAN B. EVERSHED (#10842)
ROBERT B. SYKES & ASSOCIATES, P.C.
 311 South State Street, #240
 Salt Lake City, Utah 84111
 Telephone No. (801) 533-0222
Attorneys for Appellant

LIST OF ALL PARTIES

All of the Parties are listed on the cover of this brief.

TABLE OF CONTENTS

TABLE OF CONTENTS	iii, iv
TABLE OF AUTHORITIES	v, vi
JURISDICTION OF THIS COURT	1
ISSUES PRESENTED FOR REVIEW	1
A. Standard of Review	1
B. Preservation of Issue	1
CONTROLLING STATUTORY PROVISIONS	2
1. Utah Code Ann. § 63-30-10(3).	2
2. Utah Const. art. I § 11.	2
3. Pete Suazo Utah Athletic Commission Act Rule 151-33-102	2
4. Pete Suazo Utah Athletic Commission Act Rule 151-33-505.	2
5. Pete Suazo Utah Athletic Commission Act Rule 151-33-613.. ..	3
NATURE OF THE CASE AND COURSE OF PROCEEDINGS	3
STATEMENT OF FACTS	3
1. Background.	3
2. The Fight.	4
3. Brad Rone’s Death.	4
4. Responsibility	5
5. The Pete Suazo Athletic Commission.	5
6. Disregard of Rules.	6
SUMMARY OF ARGUMENTS	8
ARGUMENT	9
POINT I	9

Regulation of Boxing Not a Governmental Function

UTAH GOVERNMENTAL IMMUNITY ACT DOES
NOT BAR PLAINTIFF'S CLAIM BECAUSE
REGULATION OF BOXING IS NOT A CORE
GOVERNMENTAL FUNCTION 9

POINT II 15
No Immunity for Issuance of Boxing License

EVEN IF THE REGULATION OF BOXING WERE
A GOVERNMENTAL FUNCTION, THE
GOVERNMENTAL IMMUNITY ACT DOES NOT
GRANT THE STATE IMMUNITY FOR THE
ISSUANCE OF A BOXING LICENSE.. . . . 15

POINT III 18
Other Grounds for Liability

MULTIPLE GROUNDS EXIST TO HOLD STATE
DEFENDANTS LIABLE OUTSIDE OF THE
ISSUANCE OF A BOXING LICENSE.. . . . 18

CONCLUSION 23

CERTIFICATE OF SERVICE 26

ADDENDUM A (Trial Court Order Granting Motion to Dismiss)

ADDENDUM B (Trial Court Order Granting Rule 54(b) Motion)

ADDENDUM C (Determinative Provisions)

TABLE OF AUTHORITIES

CASES:

<i>Butler, Crockett and Walsh Development Corp. v. Salt Lake County</i> , 2005 UT App 402, 2005 WL 2303808.	16
<i>Case v. Case</i> , 2004 UT App 423, 103 P.3d 171.	1
<i>DeBry v. Noble</i> , 889 P.2d 428 (Utah 1995)	16
<i>Gillman v. Department of Financial Institutions of State of Utah</i> , 782 P.2d 506 (Utah 1989)	16
<i>Johnson v. Salt Lake City Corp.</i> , 629 P.2d 432 (Utah 1981)	12
<i>Ledfors v. Emery County Sch. Dist.</i> , 849 P.2d 1162 (Utah 1993).	10, 11
<i>Lyon v. Burton</i> , 2000 UT 55, 5 P.3d 616	13, 14
<i>Standiford v. Salt Lake City Corp.</i> , 605 P.2d 1230 (Utah 1980)	11, 12, 13
<i>State v. Sun Surety Ins. Co.</i> , 2004 UT 74, 99 P.3d 818.	1
<i>Thomas v. Clearfield City</i> , 642 P.2d 737 (Utah 1982)	14
<i>Trujillo v. Utah Dept. of Transportation</i> , 1999 UT App 227, 968 P.2d 752.	10

STATUTES:

Article I, section 11 of the Utah Constitution	2, 9, 10, 15
Pete Suazo Utah Athletic Commission Act Rule R151-33-505.	2, 5, 7, 21, 22
Pete Suazo Utah Athletic Commission Act Rule R151-33-613.	3, 5, 6, 7, 21

Utah Code Ann. § 63-30-10(3)	1, 2, 9, 15, 16, 23
--	---------------------

JURISDICTION OF THIS COURT

The Utah Court of Appeals has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2(3)(j).

ISSUES PRESENTED FOR REVIEW

The issues before the Court are: 1) whether the regulation of the sport of boxing is a core governmental function; 2) whether the licensing provision in Utah Code Ann § 63-30-10(3) applies to the issuance of a boxing license; and 3) whether plaintiff has alleged adequate alternative grounds for suit.

A. Standard of Review.

Whether a trial court has subject matter jurisdiction presents a question of law which this Court reviews under a correction of error standard without deference to the trial court. *See, e.g., Case v. Case*, 2004 UT App 423, ¶ 5, 103 P.3d 171.

B. Preservation of Issue

Questions of subject matter jurisdiction, because they are threshold issues, may be raised at any time and are addressed before resolving other claims. *State v. Sun Surety Ins. Co.*, 2004 UT 74, 99 P.3d 818.

CONTROLLING STATUTORY PROVISIONS

A. GOVERNMENTAL IMMUNITY ACT

63-30-11(3) Waiver of immunity for injury caused by negligent act or omission of employee – Exceptions.

Immunity from suit of all governmental entities is waived for injury proximately caused by a negligent act or omission of an employee committed within the scope of employment except if the injury arises out of, in connection with, or results from:

* * *

(3) the issuance , denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

B. UTAH CONSTITUTION

Article I, Section 11. [Courts open -- Redress of injuries.]

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party

C. PETE SUAZO UTAH ATHLETIC COMMISSION ACT RULES.

The following provisions are central to the issue on appeal and are included in Addendum C to this Brief.

Pete Suazo Utah Athletic Commission Act Rule 151-33-102.

Pete Suazo Utah Athletic Commission Act Rule 151-33-505.

Pete Suazo Utah Athletic Commission Act Rule 151-33-613.

NATURE OF THE CASE AND COURSE OF PROCEEDINGS

The Notice of Claim in this case was originally served on June 24, 2004. The complaint was filed on July 6, 2005. On December 22, 2005, Judge Peuler of the Third District Court heard oral arguments on the State of Utah's Motion to Dismiss. On February 9, 2006, the trial court granted the motion to dismiss. On April 28, 2006 the trial court granted plaintiff's motion for a Rule 54(b) Certification of Final Judgment.

STATEMENT OF FACTS

The following facts support overturning the trial court's grant of defendants' motion to dismiss.

1. **Background.** Bradley Rone, a journeyman boxer, died in a boxing ring in Cedar City, Utah on July 18, 2003. He accepted the fight on very short notice in order to make enough money to fly home to Ohio for his mother's funeral. R. 11. Sadly, Rone was flown home in the cargo section of the plane and was buried alongside his mother in a double funeral. He left behind nine brothers and sisters, including the plaintiff in this action, Celeste Moss. R. 6-7.

2. The Fight. On July 18, 2003, at the Cedar Raceway Motor Sports Park in Cedar City, Utah, heavyweight boxer Bradley Rone stepped into the ring for a scheduled six-round bout against Billy Zumbrun. R. 6. Rone accepted the fight on very short notice in order to earn enough money to return to Ohio for the funeral of his mother, who had died a day earlier. He was to be paid \$800. Rone, carrying 259 pounds on his 5'10" frame, and suffering from high blood pressure, had lost 26 consecutive fights coming into the July 18 bout, including five by knockout. R.9. His losses immediately preceding the July 18 fight were a six-round decision loss to Zumbrun on June 27, 2003, and a May 23, 2003 technical knockout at the hands of Eric Kirkland. R. 8.

3. Brad Rone's Death. As the first round of the bout progressed, Rone became increasingly short of breath. He collapsed at the end of the round and never regained consciousness. Bradley Rone was pronounced dead upon arrival at Valley View Medical Center. An autopsy conducted by Todd C. Grey, M.D., Chief Medical Examiner for the State of Utah, determined that Rone died as a result of an idiopathic cardiac arrhythmia. In layman's terms, Rone suffered heart failure which was

brought about by his exertion in the fight. The idiopathic cardiac arrhythmia was caused by Rone's exertion in the fight. R. 7.

4. Responsibility. The medical examiner determined that an idiopathic cardiac arrhythmia caused Rone's death. But the real cause of death was the negligence and deliberate disregard by the Utah Athletic Commission for its own rules and regulations, rules which were written to protect boxers like Bradley Rone. Had the Commission followed its rules, Rone would not have been allowed in the ring on July 18, 2003 and would be alive today. R. 12.

5. The Pete Suazo Utah Athletic Commission. The Pete Suazo Utah Athletic Commission ("Commission") is a division of the Utah Department of Commerce and is responsible for regulating the sport of professional boxing in the State of Utah. The Commission is responsible for: 1) sanctioning and supervising professional boxing matches in the State of Utah; 2) the safety of the participants in professional boxing matches in the State of Utah; 3) licensing professional boxers; 4) determining whether a professional boxer is fit to compete in a boxing match; and 5) enforcing the rules known as the Pete Suazo Utah Athletic Commission Act Rules. R. 3-4.

6. Disregard of Rules. Pete Suazo Utah Athletic

Commission Act Rule R151-33-613(8) states, in pertinent part, as follows:

“A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician. . . .” The Commission ignored this rule as it failed to review the results of Rone’s fights, this in spite of the fact that Rone had lost not six, but twenty-six consecutive fights. The Commission violated R151-33-613(8) in permitting Rone to compete on July 18, 2003 even though he had lost far more than six consecutive fights.

Pete Suazo Utah Athletic Commission Act Rule R151-33-613(7) states, in pertinent part, that a boxer who has lost by technical knockout “may not resume boxing. . . .unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing.” At no time between May 23, 2003, the date of Rone’s technical knockout loss, and July 18, 2003, did Rone undergo a neurological examination – not prior to his June 27 fight against Zumbrun, which also took place in Utah, and not before his July 18 fight. At no time between May 23 and July 18, 2003 did the Commission receive the results

of a neurological examination, as required by R151-33-613(7). At no time between May 23 and July 18, 2003 did the Commission receive a physician's certification stating that Rone was given a neurological examination and that he was fit to compete, as required by R151-33-613(7). The Commission permitted Rone to compete in a professional boxing contest even though there was no compliance with R151-33-613(7) requiring a neurological examination.

Pete Suazo Utah Athletic Commission Act Rule R151-33-505

states, in pertinent part, as follows:

(1) Not less than ***eight hours before a contest***, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The ***examination shall include a detailed medical history and a physical examination of all of the following:*** (a) eyes; (b) teeth; (c) jaw; (d) neck; (e) chest; (f) ears; (g) nose; (h) throat; (I) skin; (j) scalp; (k) head; (l) abdomen; (m) ***cardiopulmonary status***; (n) neurological, musculature, and skeletal systems; (o) pelvis; and (p) the presence of controlled substance in the body. (2) If after the examination the physician ***determines that a contestant is unfit for competition***, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing. (3) The physician shall provide a ***written certification*** of those contestants who are in good physical condition to compete.

R151-33-505 (2003) (emphasis added). Rone was not given a medical examination as required by R151-33-505. No examination was given eight

or more hours prior to the bout, and no history and examination of Rone's cardiopulmonary status was taken despite Rone's history of high blood pressure and despite the fact that he was visibly overweight. Moreover, no physician provided written certification that Rone was in condition to compete. Clearly, Rone was not fit to compete on July 18, 2003, and a proper examination would have revealed that fact. R. 3-6.

In failing to follow its own rules, the Commission and the State defendants caused the death of Bradley Rone. R. 3-4.

SUMMARY OF ARGUMENTS

In granting defendants' motion to dismiss, the Trial Court held, in effect, that the Commission can ignore its own rules and will not be held accountable in any way. Clearly, such a ruling runs contrary to any idea of justice, to any idea of what our society should be, to the very principles of the Utah Constitution, which says that individuals should have recourse to the courts for their injuries. This Court must send out a clear message that it is not permissible for the Commission to ignore rules promulgated by the legislature to protect the health, safety and life of boxers. To hold otherwise, to say that Rone's family has no recourse for their brother's death, would be an embarrassment to Utah and a denigration of the Utah

Constitution. This Court alone has the power to say that Bradley Rone's life had worth.

The Utah Governmental Immunity Act does not apply to this case because the regulation of the sport of boxing is not a core governmental function. If the Court finds that the Governmental Immunity Act applies then the Court should find that the licensing provision in Utah Code Ann. § 63-30-10(3) does not apply to the issuance of a boxing license. Finally, the Court should find that there are other grounds for liability outside of the issuance of the boxing license. The case against the State of Utah and the Pete Suazo Utah Athletic Commission should be allowed to proceed.

ARGUMENT

POINT I

~ Regulation of Boxing Not a Governmental Function ~

UTAH GOVERNMENTAL IMMUNITY ACT DOES NOT BAR PLAINTIFF'S CLAIM BECAUSE REGULATION OF BOXING IS NOT A CORE GOVERNMENTAL FUNCTION

The Utah Constitution protects an individual's fundamental right to seek redress in the law for an injury done to his person. Although the Utah Governmental Immunity Act ("GIA") protects the state against

certain types of lawsuits, it does not apply, as here, when the state is involved in an activity which could be performed by a non-governmental entity.

Article I, section 11 of the Utah Constitution proclaims:

All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

Utah Const. art. I, § 11.

Individuals cannot be easily deprived of this important constitutional right. That is why Utah places the burden of stripping an individual of this right based on a claim of governmental immunity squarely on the government. In Utah, it is well settled that “[i]mmunity is an affirmative defense which the defendant bears the burden of proving.” *Trujillo v. Utah Dept. of Transportation*, 1999 UT App 227, ¶27, 986 P.2d 752.

The applicability of the GIA to a particular activity rests on a three-step analysis:

(1) whether governmental conduct at issue was a governmental function to which general grant of immunity applies; (2) if the

conduct is a governmental function, whether the Act waives immunity for injuries arising out of the particular governmental function at issue; and (3) even if immunity is otherwise waived, whether an exception applies that retains immunity for the exercise of that governmental function.

Ledfors v. Emery County Sch. Dist., 849 P.2d 1162, 1164 (Utah 1993). An examination of the first prong of this three-step analysis makes it clear that, in the instant matter, the state defendants are not protected by the GIA, as the conduct at issue was not conduct to which governmental immunity applies.

In order to claim immunity for an activity purported to be a “governmental function,” the state must show that “the activity under consideration is of such a unique nature that it can only be performed by a governmental agency or that it is essential to the *core of governmental activity*.” *Standiford v. Salt Lake City Corp.*, 605 P.2d 1230, 1236-37 (Utah 1980) (emphasis added). It is self-evident that such is not the case with the regulation and administration of boxing.

Although the State of Utah, through its Department of Commerce and the Pete Suazo Utah Athletic Commission, has assumed the responsibility for regulating and administering the sport of professional boxing in Utah, common sense and common experience tell us that

non-governmental entities could readily take on this job. The government does not regulate amateur boxing and does not regulate other professional sports. A non-profit organization called USA Boxing administers and develops the sport of amateur boxing in this country (including in Utah). With regard to Major League Baseball, the National Football League, the National Basketball Association, the National Hockey Association – none of these leagues are run by government entities.

The fact that the State of Utah has voluntarily taken on the task of regulating professional boxing in the State does not change the nature of the activity. The activity in this case is the regulation and administration of a sport, which is neither a traditional nor an essential government function.

Case law has acknowledged as much with respect to recreational sports or activities. In *Standiford, supra*, a city's operation of a golf course was held not to be a core governmental function for purposes of the GIA. Similarly, in *Johnson v. Salt Lake City Corp.*, 629 P.2d 432 (Utah 1981), maintenance of a sledding hill on a public golf course was held not to be a core governmental function.

The test set forth in *Standiford*, supra, decided in 1980, remains good law today:

DeBry held that the legal principles the Legislature established in the landmark Governmental Immunity Act of 1965, as construed in *Standiford v. Salt Lake City Corp.*, reflected the proper constitutional boundary between those governmental activities that are entitled to immunity under governmental immunity law (subject to legislative waiver) and are not subject to Article I, section 11 protections, and those governmental activities that are not subject to immunity and that are subject to the remedies protected by Article I, section 11.

Lyon v. Burton, 2000 UT 55, ¶ 35, 5 P.3d 616. Importantly, the GIA is considered always in the light of the important constitutional principle that an injured individual has the right to seek redress by due course of law.

Lyon, supra, continues:

[P]olicies favoring governmental immunity cannot be viewed in isolation from article I, section 11 and the harsh effect of denying individuals a remedy for what may be devastating injuries. In applying the Standiford test, the Court must, among other things, evaluate whether the effect of tort liability **would promote public safety or defeat essential or core governmental activities** and programs that are **critical to the protection of public safety and welfare**.

Id. at ¶ 39 (emphasis added).

In *Lyon*, supra, the court found that the grant of immunity for firefighting would promote the safety of the community; firefighting was

therefore held to be “an essential and core governmental activity.” *Id.*, at ¶ 42. The opposite is true here. A grant of blanket immunity to the Athletic Commission for boxing would release that body from any kind of accountability for its actions and would thereby create a potential danger for boxers. The Commission could allow a blind man to fight, or a man with AIDS, or it could allow a 200-pound man to fight a 100-pound woman – all without repercussion. The Commission, which is not involved in an essential or core governmental activity, must be held accountable for its actions, for its deliberate and/or negligent failure to follow its clear rules.

Even the collection and disposal of sewage, an activity which would seem closer to a governmental function than the regulation of boxing, was held by this Court not to be an essential governmental function. “[T]he collection and disposal of sewage is not ‘of such a unique nature that it can only be performed by a governmental agency,’ in the sense that these are activities that ‘government alone must do.’” *Thomas v. Clearfield City*, 642 P.2d 737, 739 (Utah 1982) (citation omitted). Where the handling of city sewer systems is not a governmental function, then certainly the regulation of a sport is not an activity that the government alone must do.

Article I, section 11 of the Utah Constitution gives Bradley Rone and his sister and heir Celeste Moss, the plaintiff in this action, the right to seek redress in a court of law for Rone's wrongful death in a boxing ring. As the regulation and administration of boxing is, according to law and according to logic, not an essential governmental function, the GIA cannot provide a bar to such a claim. To hold otherwise would encourage the Commission to neglect and to disregard its own rules.

POINT II

~ No Immunity for Issuance of Boxing License ~

EVEN IF THE REGULATION OF BOXING WERE A GOVERNMENTAL FUNCTION, THE GOVERNMENTAL IMMUNITY ACT DOES NOT GRANT THE STATE IMMUNITY FOR THE ISSUANCE OF A BOXING LICENSE.

The Governmental Immunity Act (2003 version), at section 63-30-10(3), states that immunity is not waived where the complained of injury arises out of "the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization." This language should not be interpreted to encompass the issuance of a boxing license.

There is little precedent in Utah law with respect to the definition of “license” in the context of Utah Code Ann. § 63-30-10(3), and no guidance at all with respect to the use of that term in the context of boxing or other sports. Since passage of the Governmental Immunity Act in 1965, Utah Code Ann. § 63-30-10 has been mentioned in only 112 cases. Just seven of those cases cite to subsection (3). Of those seven, only one speaks about a “license” and two others address situations in which a “permit” was issued or denied. None of these three cases is helpful in the instant case. *Butler, Crockett and Walsh Development Corp. v. Salt Lake County*, 2005 UT App 402, deals with the denial of a conditional use permit; *DeBry v. Noble*, 889 P.2d 428 (Utah 1995) addresses the issuance of a temporary occupancy permit; and *Gillman v. Department of Financial Institutions of State of Utah*, 782 P.2d 506 (Utah 1989) addresses a failure to revoke or suspend a financial institution’s license. The permits and license issued or denied in these cases were administrative in nature. The same cannot be said of the boxing license issued to Bradley Rone, who was permitted to step into a boxing ring and risk his health and his life.

The issuance of a boxing license is in no way simply administrative in nature. It depends on a determination that an individual

is medically fit to compete in a boxing match, and requires that the would-be boxer pass a series of medical tests and other requirements which are set forth in detail in the Pete Suazo Athletic Commission Act Rules. Issuance of such a license impacts in a very real way on the safety and the life of a boxer. To hold that the agency that issues boxing licenses has a blanket grant of immunity is to hold that the decision to license a boxer can be made without following the specific medical requirements set down by the legislature. Such a holding would encourage the type of deliberate disregard for important medical rules which occurred when Bradley Rone was allowed to box on July 18, 2003. It would permit the Commission to license a blind man or a man with AIDS or a man who would be susceptible to grave injury for a thousand other reasons without being held to account. Such a result would set a terrible precedent, as it would say that the State of Utah does not need to follow its own rules, that the State of Utah can deliberately or negligently disregard human life and human safety without any accountability.

It is vital, then, since there is no precedent on the issue of whether the issuance of a boxing license is covered by the GIA, that this Court reach a result that is in keeping with justice and with the values that

it wants to impart to society. Life and safety matter. A boxer's life and safety matter. Rules to protect a boxer's life and safety were put in place for a reason, and those rules must be followed. It is negligent not to do so.

This Court need not even reach the question of whether the grant of immunity for a licensing decision applies in the present context because the GIA has no bearing on the administration and regulation of boxing. However, if the Court chooses to address this issue, it is respectfully requested that this Court distinguish the issuance of a boxing license from the administrative issuance of permits and licenses which do not so directly impact on human life and as does a boxing license.

POINT III

~ Other Grounds for Liability ~

MULTIPLE GROUNDS EXIST TO HOLD STATE DEFENDANTS LIABLE OUTSIDE OF THE ISSUANCE OF A BOXING LICENSE.

The deliberate and negligent actions of the state defendants went far beyond a simple decision to license Bradley Rone. In fact, the Commission's issuance of a license to Rone took place on a date prior to July 18, 2003. While it is certainly true that licensing Rone was a

prerequisite to his getting into a boxing ring in Utah, it was by no means the only prerequisite.

The State correctly argues that just because it issues licenses to drivers in Utah, it cannot be held liable for every accident in which those drivers are involved. R. 57-58. This is true when the state has specific criteria for a license and then has no continuing role or supervision and responsibility. This is why the cases cited above deal with the issuance or denial of a license or permit *where the tortious conduct was committed by another party*.

Assuming the Court finds that the State of Utah is immune from suit as the licensor in this case, who would be the driver/tortfeasor? By way of an analogy, the State of Utah in effect, is both the *licensor* and the *driver* in issuing the boxing license and committing the tortious acts. Therefore, holding the State harmless for its wrongful conduct where they have licensed a fighter, continued to take an active role in the regulation of the sport and the individual boxer, and systematically disregarded its own rules and regulations would be a miscarriage of justice.

The Pete Suazo Utah Athletic Commission Act Rules set forth the many other requirements that must be satisfied before an individual is

allowed to box. The State defendants negligently and deliberately disregarded several of these rules, and such negligent and intentional actions provide grounds for liability which are separate, subsequent, and apart from the Commission's issuance of a license.

The following excerpts from plaintiff's complaint (with emphasis added) show additional subsequent grounds of liability, where the State negligently and deliberately disregarded its own rules and regulations, thereby causing the death of Bradley Rone:

36. The negligence of the State of Utah, Utah Department of Commerce, the Commission, and the Commission's agents and employees, including Weinsoft ("State Defendants"), was the proximate cause of the damages and the death of Rone, in that ***State Defendants systematically disregarded the rules and regulations*** of the Commission in allowing Rone to fight even though he was not fit to compete.

37. Prior to the Fight on July 18, 2003, in the period from May 12, 2000 up until the time of the Fight, Rone had ***lost twenty-six (26) consecutive*** professional boxing contests.

38. On June 27, 2003, Rone lost a ***six-round decision to boxer Billy Zumbrun*** in Salt Lake City, Utah.

39. The June 27, 2003 bout between Rone and Zumbrun in Salt Lake City was a ***one-sided, uncompetitive fight***.

40. On May 23, 2003, Rone ***lost by technical knockout*** to boxer Erik Kirkland in Concho, Oklahoma.

41. At no time between May 23, 2003, the date of Rone's technical knockout, and July 18, 2003, the date of the Fight, did Rone undergo a ***neurological examination***.

42. At no time between May 23, 2003 and July 18, 2003 did the Commission ***receive the results of a neurological examination, as required by R151-33-613(7)***.

43. At no time between May 23, 2003 and July 18, 2003 did the Commission ***receive a physician's certification*** stating that Rone was given a ***neurological examination*** and that he was fit to compete, as required by R151-33-613(7).

44. The Commission permitted Rone to compete in a professional boxing contest even though there was ***no compliance with R151-33-613(7) requiring a neurological examination***.

45. The Commission violated R151-33-613(8) in permitting Rone to compete on July 18, 2003 even though he had ***lost far more than six consecutive fights***.

* * *

50. At no time did the Commission ***review the results*** of Rone's consecutive losses as required by R151-33-613(8).

* * *

53. Rone was ***not given a medical examination*** as required by R151-33-505.

54. Rone was ***not given a medical examination eight or more hours*** before the Fight as required by R151-33-505.

* * *

61. A medical examination of Rone as required by R151-33-505 would have revealed that Rone had a *history of high blood pressure*.

* * *

63. The Commission *knew or had reason to know* that Rone had a *history of high blood pressure*.

64. A medical examination of Rone as required by R151-33-505 would have revealed that *Rone was not fit to compete* in a boxing contest on July 18, 2003.

* * *

72. The Commission *violated its own rules* in permitting Rone to participate in the Fight.

73. The Commission was *negligent in permitting Rone to participate* in the Fight.

* * *

76. The Commission *failed to verify the validity of the medical documentation* upon which its issuance of a license to Rone was based.

The State defendants' self-serving characterization of the Commission's actions as a licensing decision, and nothing more, is not accurate. Defendants seek to escape responsibility for the death of Rone with their misleading claim that the immunity granted the state for making

a licensing decision encompasses all of the actions and inactions of the Commission.

As spelled out in the Complaint, the Commission's actions went far beyond the issuance of a license. In this case, the State of Utah was both the licensor and the tortfeasor in that the Commission violated rules it was required to follow and ignored medical requirements it was required to enforce. The Commission, very simply, has a duty to follow and to enforce the Pete Suazo Utah Athletic Commission Act Rules. It failed in that duty, and its failure led to the death of Bradley Rone.

CONCLUSION

The heirs of Bradley Rone are asking this Court for the kind of fair treatment that their brother did not receive from the Commission. They are seeking justice, and asking the Court not to credit the State defendants' unfounded reliance on the Governmental Immunity Act. The GIA does not apply here as the regulation and administration of the sport of boxing is not a "governmental function" as that term is defined in statute and in case law. Even if the Court decided that the GIA does apply in the context of regulating and administering the sport of boxing, Utah Code Ann. §63-30-10(3) should have no applicability to the issuance of boxing

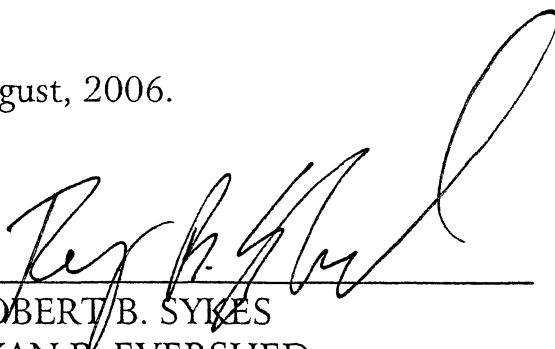
licenses. In any event, in the case of Bradley Rone, there are multiple grounds of liability which go far beyond the mere issuance of a license by the Commission.

The State defendants are essentially relying on a technicality, and one that is inapplicable in the present situation, in their attempt to defeat justice. They are trying to shoe-horn all of the Commission's negligent and deliberate failures to follow its own rules into the awkward rubric of a licensing decision. Justice does not support these contortions. The defendants' position, taken to its logical extension, would mean that the Commission would never be held accountable for even the most outrageous negligence because every action would be a "licensing" decision. The Commission could with impunity, deliberately ignore all of the rules which it is required by law to uphold, rules which have been put in place to protect the health and safety of boxers. It could, without accountability, put boxers into situations where their lives and health are jeopardized. For example, the Commission could allow a man with no arms to step into a boxing ring and not be accountable because it is a licensing act. This Court should not give sanction to such a result, as it does not meet the basic demands of what is just and what is right.

The lower court decision dismissing plaintiff's claim against the State defendants has prompted an outcry from the public and from the media. Such a decision, if allowed to stand, would be a grave injustice and an embarrassment to Utah.

Plaintiff respectfully requests that this Court reverse the ruling of the lower court and allow the heirs of Bradley Rone to seek redress in our courts for his wrongful death.

DATED this 4th day of August, 2006.



ROBERT B. SYKES
RYAN B. EVERSHED
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of **Appellants' Brief** were served upon all parties of record, at the address listed below, by hand delivery, on this ~~4th~~ day of August, 2006:

7th

Attorneys for State of Utah:

Debra J. Moore

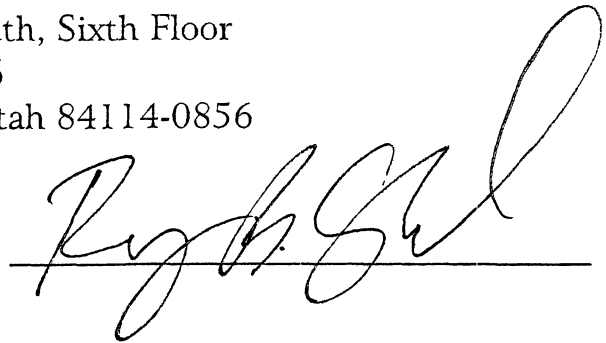
Barry Lawrence

ASSISTANT ATTORNEYS GENERAL

160 East 300 South, Sixth Floor

P. O. Box 140856

Salt Lake City, Utah 84114-0856

A handwritten signature in black ink, appearing to read "Ryan B. Galt", is written over a horizontal line.

ADDENDUM A

FILED DISTRICT COURT
Third Judicial District

FEB - 9 2006

By SALT LAKE COUNTY 
Deputy Clerk

BARRY LAWRENCE (5304)
Assistant Utah Attorney General
MARK L. SHURTLEFF (4666)
Utah Attorney General
Attorneys for Defendants
160 East 300 South, Sixth Floor
P.O. Box 140856
Salt Lake City, Utah 84114-0856
Telephone: (801) 366-0100

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

CELESTE MOSS, an Heir of BRADLEY
A. RONE,

Plaintiff,

vs.

PETE SUAZO UTAH ATHLETIC
COMMISSION, UTAH DEPARTMENT
OF COMMERCE, STATE OF UTAH,
RICHARD WEINSOFT, Utah Athletic
Commission Director, TOP RANK INC., a
Nevada Corporation, SEAN GIBBONS,
PETE SUSENS, CORNELIUS BOZA-
EDWARDS, FKF PRODUCTIONS,
EDDIE "FLASH" NEWMAN, and JOHN
AND JANE DOES I-10,

Defendants.

:
: **ORDER GRANTING THE STATE'S**
: **MOTIONS TO DISMISS AND**
: **DISMISSAL WITH PREJUDICE**

:
: Case No. 050911890

:
: Judge Sandra Peuler

Procedural Background: Plaintiff's Complaint ("Complaint") asserts various claims
against the Pete Suazo Athletic Commission, its Commissioner Richard Weinsoft, the Utah

Department of Commerce, and the State of Utah, among others, arising out of the death of plaintiff's decedent, Bradley Rone, which occurred between rounds of a boxing match on July 18, 2003. Plaintiff asserts that the defendants should not have permitted the boxing match to take place.

On August 22, 2005, Richard Weinsoft filed *Richard Weinsoft's Motion to Dismiss*, along with a supporting memorandum, in which he asserted that he was immune in this matter: i) because he was a State employee thereby entitled to immunity under Utah Code Ann. § 63-30-4(4); and ii) because a notice of claim was never filed to preserve a claim against him under Utah Code Ann. § 63-30-11. On the same date, the Pete Suazo Athletic Commission, the Utah Department of Commerce, and the State of Utah (the "State Defendants") filed *The State Defendants' Motion to Dismiss*, along with a supporting memorandum, in which they asserted that all of plaintiff's claims against them were barred by Utah Code Ann. §§ 63-30-10(3), because plaintiffs' injuries all arose out of the issuance of a "permit, license, certificate, approval, order or similar authorization."

On October 6, 2005, plaintiff filed memoranda in opposition to the two Motions to Dismiss. On October 18, 2005, the Defendants filed reply memoranda in support of the two Motions to Dismiss. On December 22, 2005, at 9:30 a.m., a hearing took place on both Motions to Dismiss. Barry G. Lawrence, Assistant Attorney General, appeared on behalf of Richard Weinsoft and the State Defendants; Robert Sykes appeared on behalf of the plaintiff. Both sides were given an opportunity to argue their respective positions on the two Motions to Dismiss. At

the conclusion of oral argument, the Court took the matter under advisement.

Ruling on the Motion for Summary Judgment. On January 20, 2006, the Court, having considered the pleadings (including the parties' memoranda and attachments) and the argument of counsel, entered a *Minute Entry* and granted both Motions to Dismiss. A copy of that *Minute Entry* is attached hereto and incorporated herein by this reference.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

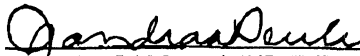
1. As a matter of law, all of plaintiff's claims against Richard Weinsoft are barred because plaintiff's notice of claim was insufficient to preserve a claim against him under Utah Code Ann. § 63-30-11. Thus, *Richard Weinsoft's Motion to Dismiss*, is hereby granted.

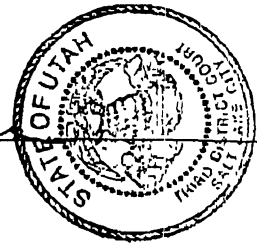
2. As a matter of law, all of plaintiff's claims against the State Defendants are barred because those parties are immune under Utah Code Ann. § 63-30-10(3), because plaintiffs' injuries all arose out of the issuance of a "permit, license, certificate, approval, order or similar authorization." Thus, *The State Defendants' Motion to Dismiss*, is hereby granted.

3. Accordingly, all of plaintiff's claims against Richard Weinsoft, the Pete Suazo Athletic Commission, the Utah Department of Commerce, and the State of Utah are hereby dismissed, on their merits and with prejudice.

DATED this 9 day of February, 2006

BY THE COURT:


JUDGE SANDRA PEULER
District Court Judge



CERTIFICATE OF SERVICE

I hereby certify that on the 30 day of January, 2006, pursuant to Rule 7(f), Utah R. Civ.

P., I caused to be served by fax transmission, a true and correct copy of foregoing (Proposed)

ORDER GRANTING THE DISTRICT'S MOTION TO DISMISS AND DISMISSING

THE DISTRICT WITH PREJUDICE to the following:

Robert Sykes (By Fax)
ROBERT SYKES & ASSOCIATES
311 South State Street, #240
Salt Lake City, Utah 84111

Paul Belnap (By Fax)
Strong & Hanni
3 Triad Center #500
Salt Lake City, Utah 84180

Jim Lewis (By Fax)
10 West 100 South, #615
Salt Lake City, Utah 84101

Pete Susens (By Mail)
c/o Top Rank, Inc.
3980 Howard Hughes Blvd., #580
Las Vegas, NV 89109

A handwritten signature, possibly "Pete Susens", is written over a horizontal line. The signature is written in dark ink and consists of several overlapping strokes.

ADDENDUM B

MAY - 2 2006

FILED DISTRICT COURT
Third Judicial District

APR 28 2006

SALT LAKE COUNTY

By _____ Deputy Clerk

ROBERT B. SYKES (#3180)
RYAN B. EVERSLED (#10842)
ROBERT B. SYKES & ASSOCIATES
311 S. State Street, #240
Salt Lake City, Utah 84111
Telephone No. (801) 533-0222
Facsimile No. (801) 533-8081
Attorneys for Plaintiff

**THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH**

CELESTE MOSS, an Heir of)	
BRADLEY A. RONE,)	ORDER DIRECTING ENTRY AND
)	CERTIFICATION OF FINAL
Plaintiff,)	JUDGMENT UNDER RULE 54(b)
)	
v.)	
)	
PETE SUAZO UTAH ATHLETIC)	
COMMISSION, UTAH)	Civil No. 050911890
DEPARTMENT OF COMMERCE,)	
STATE OF UTAH, RICHARD)	Judge Sandra Peuler
WEINSOFT, Utah Athletic)	
Commission Director, TOP RANK,)	
INC., a Nevada Corporation, SEAN)	
GIBBONS, PETE SUSENS,)	
CORNELIUS BOZA-EDWARDS, FKF)	
PRODUCTIONS, EDDIE "FLASH")	
NEWMAN, and JOHN AND JANE)	
DOES 1-10,)	
)	
Defendants.)	

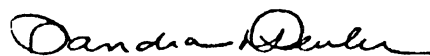
Based upon the Motion for Rule 54(b) Certification of Final Judgment and
good cause otherwise appearing,

IT IS HEREBY ORDERED:

1. The request for oral argument is denied.
2. Plaintiff's motion for Rule 54(b) certification is granted and the Court expressly directs entry and certification of final judgment to that effect. There are clearly multiple parties to this action. The ruling dismissing the State defendants would be appealable, but for the remaining parties in the lawsuit.
3. The Court finds that there is no just reason for delaying the certification and entry of final judgment with respect to Richard Weinsoft and the State of Utah since it is reasonable for the appellate court to review this Court's ruling to determine whether the State defendants should participate at trial.
4. No ruling is made regarding a stay of the proceedings, since that matter has not been formally addressed by motion.
5. The Court orders that the parties bear their own costs and attorneys fees with respect to this motion.

DATED this 22 day of April, 2006.

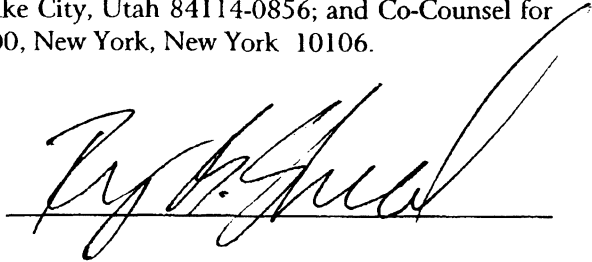
BY THE COURT:



Hon. Sandra Peuler
District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Order Directing Entry and Certification of Final Judgment Under Rule 54(b)** was served upon all parties of record by depositing the same in the United States mail, postage pre-paid, on this 20th day of April, 2006, to the following: **Barry Lawrence**, Utah Attorney General's Office, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114-0856; **James Lewis**, 10 West 100 South, Suite 615, Salt Lake City, Utah 84101; **Pete Susens, c/o Top Rank, Inc.** 3980 Howard Hughes Blvd., #580, Las Vegas, NV 89109; **Paul Belnap, Andrew G. Wright**, 3 Triad Center, Suite 500, Salt Lake City, Utah 84180; **Sandra L. Steinvooort**, Utah Attorney General's Office, 160 East 300 South, 6th Floor, Salt Lake City, Utah 84114-0856; and Co-Counsel for Plaintiff: **David Berlin**, 888 Seventh Avenue, Suite 4500, New York, New York 10106.

A handwritten signature in black ink, appearing to read "David Berlin", is written over a horizontal line.

Q:\CLIENT\1879 Rose\PJ1A - MOT\4-54(b) cert.fina\4-Order.wpd

ADDENDUM C

Pete Suazo Utah Athletic Commission Act Rule 151-33-102.

R151-33-102. Definitions.

In addition to the definitions in Title 13, Chapter 33, the following definitions are adopted for the purpose of this Rule:

(1) "Boxing" means the sport of attack and defense using the fist, covered by an approved boxing glove.

(2) "Designated Commission member" means a member of the Commission designated as supervisor for a contest and responsible for the conduct of a contest, as assisted by other Commission members, Commission personnel, and others, as necessary and requested by the designated Commission member.

(3) "Drug" means a controlled substance, as defined in Title 58, Chapter 37, Utah Controlled Substances Act, or alcohol.

(4) "Elimination Tournament" means a contest involving unarmed combat in which contestants compete in a series of matches until not more than one contestant remains in any weight category.

(5) "Mandatory count of eight" means a required count of eight that is given by the referee of a boxing contest to a contestant who has been knocked down.

(6) "Unprofessional conduct" is as defined in Subsection 13-33-102(21), and is defined further to include the following:

(a) as a promoter, failing to promptly inform the Commission of all matters relating to the contest;

(b) as a promoter, substituting a contestant in the 24 hours immediately preceding the scheduled contest without approval of the Commission;

(c) violating the rules for conduct of contests;

(d) testing positive for drugs or alcohol in a random body fluid screen before or after participation in any contest;

(e) testing positive for HIV;

(f) failing or refusing to comply with a valid order of the Commission or a representative of the Commission; and

(g) for a promoter and a contestant, entering into a secret contract that contradicts the terms of the contract(s) filed with the Commission.

Pete Suazo Utah Athletic Commission Act Rule 151-33-505.

R151-33-505. Physical Examination - Physician.

(1) Not less than eight hours before a contest, each contestant shall be given a medical examination by a physician who is appointed by the designated Commission member. The examination shall include a detailed medical history and a physical examination of all of the following:

- (a) eyes;
- (b) teeth;
- (c) jaw;
- (d) neck;
- (e) chest;
- (f) ears;
- (g) nose;
- (h) throat;
- (i) skin;
- (j) scalp;
- (k) head;
- (l) abdomen;
- (m) cardiopulmonary status;
- (n) neurological, musculature, and skeletal systems;
- (o) pelvis; and
- (p) the presence of controlled substances in the body.

(2) If after the examination the physician determines that a contestant is unfit for competition, the physician shall notify the Commission of this determination, and the Commission shall prohibit the contestant from competing.

(3) The physician shall provide a written certification of those contestants who are in good physical condition to compete.

(4) Before a bout, a female contestant shall provide the ringside physician with the results of a pregnancy test performed on the contestant within the previous 14 days. If the results of the pregnancy test are positive, the physician shall notify the Commission, and the Commission shall prohibit the contestant from competing.

(5) A female contestant with breast implants shall be denied a license.

(6) A contestant who has had cardiac surgery shall not be issued a license unless he is certified as fit to compete by a cardiovascular surgeon.

(7) A contest shall not begin until a physician and an attended ambulance are present. The physician shall not leave until the decision in the final contest has been announced and all injured contestants have been attended to.

(8) The contest shall not begin until the physician is seated at ringside. The physician shall remain at that location for the entire fight, unless it is necessary for the physician to attend to a contestant.

Pete Suazo Utah Athletic Commission Act Rule 151-33-613.

R151-33-613. Boxing - Procedure After Knockout or Contestant Sustaining Damaging Head Blows.

(1) A boxing contestant who has lost by a technical knockout shall not fight again for a period of 30 calendar days or until the contestant has submitted to a medical examination. The Commission may require such physical exams as necessary.

(2) A ringside physician shall examine a boxing contestant who has been knocked out in a contest or a contestant whose fight has been stopped by the referee because the contestant received hard blows to the head that made him defenseless or incapable of continuing immediately after the knockout or stoppage. The ringside physician may order post-fight neurological examinations, which may include computerized axial tomography (CAT) scans or magnetic resonance imaging (MRI) to be performed on the contestant immediately after the contestant leaves the location of the contest. Post-fight neurological examination results shall be forwarded to the Commission by the ringside physician as soon as possible.

(3) A report that records the amount of punishment a fighter absorbed shall be submitted to the Commission by the ringside physician within 24 hours of the end of the fight.

(4) A ringside physician may require any boxing contestant who has sustained a severe injury or knockout in a bout to be thoroughly examined by a physician within 24 hours of the bout. The physician shall submit his findings to the Commission. Upon the physician's recommendation, the Commission may prohibit the contestant from boxing until the contestant is fully recovered and may extend any such suspension imposed.

(5) All medical reports that are submitted to the Commission relative to a physical examination or the condition of a boxing contestant shall be confidential and shall be open for examination only by the Commission and the licensed contestant upon the contestant's request to examine the records or upon the order of a court of competent jurisdiction.

(6) A boxing contestant who has been knocked out or who received excessive hard blows to the head that made him defenseless or incapable of continuing shall not be permitted to take part in competitive or noncompetitive boxing for a period of not less than 60 days. Noncompetitive boxing shall include any contact training in the gymnasium. It shall be the responsibility of the boxing contestant's manager and seconds to assure that the contestant complies with the provisions of this Rule. Violation of this Rule could result in the indefinite suspension of the contestant and the contestant's manager or second.

(7) A contestant may not resume boxing after any period of rest prescribed in Subsections R151-33-613(1) and (6), unless following a neurological examination, a physician certifies the contestant as fit to take part in competitive boxing. A boxing contestant who fails to secure an examination prior to resuming boxing shall be automatically suspended until the results of the examination have been received by the Commission and the contestant is certified by a physician as fit to compete.

(8) A boxing contestant who has lost six consecutive fights shall be prohibited from boxing again

until the Commission has reviewed the results of the six fights or the contestant has submitted to a medical examination by a physician.

(9) A boxing contestant who has suffered a detached retina shall be automatically suspended and shall not be reinstated until the contestant has submitted to a medical examination by an ophthalmologist and the Commission has reviewed the results of the examination.

(10) A boxing contestant who is prohibited from boxing in other states or jurisdictions due to medical reasons shall be prohibited from boxing in accordance with this Rule. The Commission shall consider the boxing contestant's entire professional record regardless of the state or country in which the contestant's fights occurred.

(11) A boxing contestant or the contestant's manager shall report any change in the contestant's medical condition which may affect the contestant's ability to fight safely. The Commission may, at any time, require current medical information on any contestant.